

# Notice of Allowability

## Application No.

10/699,751

## Examiner

Michael M. McGaw

## Applicant(s)

HARFORD ET AL.

## Art Unit

1648

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's Response received November 19, 2004.
2. ☒ The allowed claim(s) is/are 9,11,13,15,17 and 19.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 07/920,286.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>01042005</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                    |
|   | 9. <input type="checkbox"/> Other _____.   |

### **EXAMINER'S AMENDMENT**

Claims 9-20 were pending in the application upon the mailing of the prior action on June 16, 2004. Claims 9-20 were rejected and claim 11 was objected to. In the Response of November 19, 2004, claims 9, 11 and 13 were amended, claims 10, 12, 14, 16, 18 and 20 were cancelled.

Currently, claims 9, 11, 13, 15, 17 and 19 are pending and under consideration.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William Majarian of GlaxoSmithKline on Tuesday, January 04, 2004. The Examiner's Amendment is as follows:

An Examiner-initiated interview was conducted on January 04, 2004 to discuss an amendment to claims 15, 17 and 19. These claims are directed at methods of inducing immunity. The claims did not specify that to which immunity was sought. The Examiner requested that the claims be amended to clarify this point. A draft of the proposed modifications were sent via fax by William Majarian on January 05, 2005 along with authorization to make the proposed change via examiner's amendment. The fax transmission is included as an attachment to Form PTOL-413B (Examiner-Initiated Interview Summary). Claims 15, 17 and 19 were amended by inserting "to measles,

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mumps, rubella and varicella zoster virus infections” in the claim to clarify that to which immunity was sought. The Examiner changed the misspelled word “varicalla” in the draft to “varicella” in the examiner’s amendment to correct a spelling error in accordance with MPEP 1302.04.

Claims 15, 17 and 19 are amended to read as follows:

15. A method of inducing immunity in a mammal to measles, mumps, rubella and varicella zoster virus infections comprising administration to the mammal of an effective amount of a vaccine according to claim 9.

17. A method of inducing immunity in a mammal to measles, mumps, rubella and varicella zoster virus infections comprising administration to the mammal of an effective amount of a vaccine according to claim 11.

19. A method of inducing immunity in a mammal to measles, mumps, rubella and varicella zoster virus infections comprising administration to the mammal of an effective amount of a vaccine according to claim 13.

***Priority***

It is noted that Applicant has amended the first line of the specification to update the priority.

***Claim Objections***

The objection to claim 11 in the Office Action dated June 16, 2004 is **withdrawn** pursuant to Applicant's amendment.

***Claim Rejections - 35 USC § 112***

The rejection of claims 9-20 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph is **withdrawn** pursuant to Applicant's amendment of claims 9, 11 and 13. As Applicant indicates on page 5 of the Response dated November 19, 2004 (i.e. date received by the Office), the amended claim language substantially incorporates language deemed appropriate by the Office in U.S. Application 10/213,965, now U.S.Pat. No. 6,656,476, the parent of the instant application. Moreover, Applicant points to page 2, lines 22-25, for support, including a definition of terminology, for the amended claim language. (See also lines 25-27 of page 2). Consequently, the rejection is **withdrawn**.

***Double Patenting***

Claims 9-20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-13 of U.S. Patent No. 6,656,476 B2 and claims 1-20 of U.S. Patent No. 6,024,962. This rejection is **withdrawn** pursuant to Applicant's terminal disclaimer received by the Office November 19, 2004.

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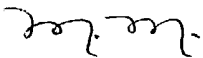
**Conclusion**

Claims 1-8, 10, 12, 14, 16, 18 and 20 have been cancelled by Applicant. Claims 9, 11, 13, 15, 17 and 19 are **allowed**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael M. McGaw whose telephone number is (571) 272-2902. The examiner can normally be reached on Monday through Friday from 8 A.M. to 5 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael M. McGaw

Wednesday, January 05, 2005



JAMES HOUSEL 1/10/05  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600